

record, the Presiding Officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* Under no circumstances may a discovery procedure be used to reach

(1) Documents, transcripts, records, or other material which a person is entitled to review pursuant to § 962.11;

(2) The notice sent to the Attorney General from the Reviewing Official under § 273.6 of this title; or

(3) Other documents which are privileged under Federal law.

#### § 962.13 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or

on his own initiative, the Presiding Officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Presiding Officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or other tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or other tangible things sought.

(3) The Presiding Officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Presiding Officer may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the

reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Presiding Officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 31 U.S.C. 3804(b) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Presiding Officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

**§ 962.14 Enforcement of subpoenas.**

In the case of contumacy or refusal to obey a subpoena issued pursuant to §§ 962.9(b)(5) and 962.13, the district courts of the United States have juris-

diction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

**§ 962.15 Sanctions.**

(a) The Presiding Officer may sanction a person, including any party or representative, for

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.